No. 9790

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

GEORGE T. GOGGIN, Trustee in Bankruptcy of the Estate of Jack Dave Sterling, Bankrupt,

Appellant,

vs.

BOLSA CHICA OIL CORPORATION, a corporation, THOS. W. SIMMONS, ALLAN A. ANDERSON, WILLIAM H. CREE, H. H. MCVICAR, C. M. ROOD, and M. M. MCCALLEN CORPORATION, a corporation,

Appellees.

APPELLANT'S OPENING BRIEF.

RAPHAEL DECHTER,
633 Subway Terminal Building, Los Angeles,

JOSEPH J. RIFKIND,
535 Rowan Building, Los Angeles,
Attorneys for Appellant.

Parker & Baird Company, Law Printers, Los Angeles.

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Jurisdiction.

This is an appeal from a decision of the United States District Court, Southern District of California, Central Division, rendered February 7, 1941, wherein and whereby the District Court dismissed the certificate of contempt of the Referee [Tr. pp. 83-85]. Notice of appeal was given within thirty days from February 7, 1941, to-wit: February 13, 1941 [Tr. pp. 86-87]. Section 24-A of the Bankruptcy Act of 1938 vests the Circuit Court with jurisdiction over such appeal.

The District Court was vested with jurisdiction by virture of Sections 2(15) and 41 of the Bankruptcy Act of 1938.

Statement of the Case.

On April 20, 1940, an order to show cause was issued by the Referee in Bankruptcy [Tr. pp. 27-28], requiring the appellee, Bolsa Chica Oil Corporation, to appear and show cause why such appropriate order should not be made to protect the "Huntington Shore" well, being an asset of the bankrupt estate of Jack Dave Sterling, Bankrupt, from damage resulting from the redrilling of the "Petroleum Well" owned by the appellee, Bolsa Chica Oil Corporation. Said order to show cause was served, together with a copy of the petition of the Trustee and copies of the affidavits of Vernon L. King, petroleum engineer, and Jack Dave Sterling, the bankrupt [Tr. pp. 19-27], upon which said order to show cause was based.

Thereupon a hearing was had before the Referee, pursuant to said order to show cause, at which the Bolsa Chica Oil Corporation appeared by its attorneys, and after hearings on April 26, 1940 and on May 1, 1940, an order was made by the Referee on May 15, 1940 [Tr. pp. 29-32] which order, among other things, enjoined the appellee, Bolsa Chica Oil Corporation, its agents and employees, from redrilling its "Petroleum Well" in such a manner as would cause it to come closer than two hundred (200) feet from the "Huntington Shore" well at any horizontal plane at a point below the depth of 3800 feet below sea level also, that the circulating fluid used in drilling said "Petroleum Well" should be virgin crude oil, and that no cementing operations be conducted without the written consent of appellant; that said order of injunction was approved by the appellee, Bolsa Chica Oil Corporation [Tr. p. 32]; that said order of injunction was stipulated to in open court by the appellee, Bolsa Chica Oil Corporation

[Tr. p. 152, fol. 189; p. 153, fol. 190, pp. 155, 156, 172]; that in said written order of injunction, while appellee, Bolsa Chica Oil Corporation, acknowledged that it was stipulating thereto, and approved the contents thereof, it caused to be inserted a reservation of objection to the general jurisdiction of the Bankruptcy Court.

That thereafter a petition to have the Bolsa Chica Oil Corporation, *et al.*, certified for contempt was filed by appellant with the Referee on August 22, 1940, and an order to show cause issued thereon, directed to Bolsa Chica Oil Corporation, McVicar-Rood, Inc., a corporation, M. M. McCullum Corporation, a corporation, H. H. McVicar, C. M. Rood, M. M. McCullum, Thomas W. Simmons, "John Doe" Anderson, and William H. Cree and Warren S. Pallette [Tr. pp. 33-39], to show cause why they should not be certified for contempt for violating or aiding and abetting in the violation of the order of injunction issued May 15, 1940.

That pursuant to said order to show cause hearings were had before the Referee on August 30, 1940, September 26, 1940 and October 1, 1940, as a result of which the Referee made a certificate of contempt containing findings of fact and conclusions of law, based upon which the Referee certified the Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, M. M. McCallen Corporation, H. H. McVicar, C. M. Rood and William H. Cree to the United States District Court as being in contempt for violating the injunction of May 15, 1940, and for such further proceedings as might be proper before

the District Court [Tr. pp. 53-72]; that an order to show cause was issued by the Referee on January 13, 1941, requiring the Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, M. M. McCallen Corporation, H. H. McVicar, C. M. Rood and William H. Cree to appear and show cause why they should not be adjudged in contempt pursuant to the certificate of the Referee [Tr. pp. 80-81]; that a motion in writing was filed by the Bolsa Chica Oil Corporation, Thos. W. Simmons and Allen A. Anderson, together with affidavits of W. S. Pallette and Donald H. Ford, upon which an order to show cause was issued why the certificate of contempt of the Referee should not be dismissed [Tr. pp. 73-79].

That thereafter the order to show cause of the Referee, based on the certificate of the Referee for contempt, and the order to show cause of the appellees, Bolsa Chica Oil Corporation, Thos. W. Simmons and Allen A. Anderson, came on for hearing on January 20, January 27, and January 30, 1941, before the Honorable Leon R. Yankwich, on which dates the matter was argued without evidence of any kind being received, and on February 7, 1941, said District Judge made an order sustaining the objection of the appellees to the jurisdiction of the Referee to issue such certificate of contempt, and sustaining the collateral attack of appellees that the Referee had no jurisdiction to make the order of injunction of May 15, 1940, the basis of such certificate of contempt; and made its further order dismissing the Referee's certificate of contempt [Tr. pp. 83-85].

Statement of the History of the Case.

The certificate of contempt of the Referee, found on pages 53-72 of the transcript, succinctly states the background leading up to the issuance of the injunction of May 15, 1940, the violation of the injunction, hearing on the order to show cause why the appellees should not be certified in contempt, and the issuance of the certificate after such hearing. Such background, as so disclosed by the certificate, is as follows:

That appellant owns an oil well known as the "Huntington Shore Well", located in what is known as the Huntington Beach oil field, and operated under an easement granted by the state of California, being easement Number 309; that said well constitutes one of the principal assets of the bankrupt estate of the appellant; that on or about September 20, 1936, the Termo Oil Company, being the holder of a similar easement to that of the appellant in said Huntington Beach oil field, commenced the re-drilling of its "Termo Well", and as a result of said re-drilling, mud, together with sand, cement, and other foreign substances were forced through the oil sands from the "Termo Well" into the "Huntington Shore Well", causing the equipment in the "Huntington Shore Well" to become stuck, and making it impossible to operate or produce said "Huntington Shore Well" [Tr. p. 55]; that as a result, appellant expended, on what is known as a "fishing job" the sum of approximately $20,000.00 without being able to free such equipment that was clogged and stuck by reason of such operations of the Termo Oil Company; that thereafter it became necessary for appellant to redrill said "Huntington Shore Well" at a cost of $80,000.00, plus a surrender of a twenty per cent interest (20%) in said well, in addi-

tion thereto; that said "Huntington Shore Well", after being redrilled was again placed on production on August 22, 1937, with an average daily production of about 295 barrels; that about April 15, 1940, appellee, Bolsa Chica Oil Corporation, commenced the redrilling of its well, known as "Petroleum Well", which likewise was operated under an easement from the state of California in the Huntington Beach oil field; that on said date appellee, Bolsa Chica Oil Corporation, was familiar with and was aware of the damaging effect of the drilling of the "Termo Well" on the "Huntington Shore Well" [Tr. p. 56]; that an application was made to enjoin appellee, Bolsa Chica Oil Corporation, from drilling its "Petroleum Well" closer than 200 feet from the "Huntington Shore Well", and from using mud as a circulating fluid in the redrilling of said well; that the testimony showed that if said well was drilled closer than 200 feet from the "Huntington Shore Well", and if mud was used, that the mud would be carried through the oil sands into the "Huntington Shore Well" and would irreparably injure and damage said well; that thereupon, and pursuant to the stipulation of the attorneys for appellees, Bolsa Chica Oil Corporation, and attorneys for appellant, made in open court, an injunction was made by the Referee enjoining the appellee, Bolsa Chica Oil Corporation, from coming closer than two hundred feet from the "Huntington Shore Well", and from using mud as a circulating fluid in the redrilling of its "Petroleum Well" [Tr. p. 57]; that said injunction was issued on May 15, 1940, same being approved by the appellee, Bolsa Chica Oil Corporation; that written notice of the entry of said injunction, together with a copy of the order of injunction, was served upon both the appellee, Bolsa Chica Oil Corporation, and its attorneys of record,

on May 17, 1940, [Tr. pp. 58-59]; that no petition for review or appeal was taken from said injunction, and that said injunction has become final and absolute by operation of law [Tr. p. 58].

That after the granting of said injunction and with full knowledge thereof, appellee, Bolsa Chica Oil Corporation, resumed the redrilling of said "Petroleum Well", by using mud as a circulating fluid in direct violation of said injunction [Tr. p. 59]; that as a result of the use of mud as a circulating fluid in the redrilling of said well, mud in liquid form, carrying with it sand and other foreign substances, infiltrated through the oil sands and was forced up into the said "Huntington Shore Well" forming a column of mud in said well of 3700 feet from the bottom of said well; that as a result thereof, production from said "Huntington Shore Well" ceased and said "Huntington Shore Well" was off production for a period of twenty days during which operations were carried on by appellant to clean out and dislodge such mud, sand and other foreign substances [Tr. p. 60]; that specimens of the mud lost in the redrilling of said "Petroleum Well" were tested, analyzed and examined, and shown conclusively to be the mud used by the appellee, Bolsa Chica Oil Corporation, in said redrilling; that at the time of the commencement of said redrilling operations, said "Huntington Shore Well" was producing 260 barrels of oil per day; that as a result of such mud being forced into said well, by reason of such operations on the redrilling of the "Petroleum Well", appellant lost production for twenty days, and the

production of the well was permanently reduced to 160 barrels of oil per day [Tr. p. 61]; that as a result of the use of mud as a circulating fluid in said "Petroleum Well", the production of the "Huntington Shore Well" has been reduced to the extent of approximately sixty (60) barrels of oil per day for the life of said well [Tr. p. 62]; that mud was used by appellee, Bolsa Chica Oil Corporation, with the knowledge and at the instance and direction of Thomas W. Simmons, its president, and Allen A. Anderson, its superintendent; that the damage so sustained by appellant was anticipated by appellant in applying for said injunction and the purpose of issuing such injunction was to avoid such damage to the property of appellant; that the appellee, Bolsa Chica Oil Corporation, knew such consequence and damage would result from the use of mud as a circulating fluid in the redrilling of its "Petroleum Well"; that after said mud, in liquid form, had infiltrated through the oil sands from the "Petroleum Well" to the "Huntington Shore Well", appellee, Bolsa Chica Oil Corporation, suspended drilling of its "Petroleum Well" on or about June 10, 1940 [Tr. p. 63]; that information having come to the appellant that appellee, Bolsa Chica Oil Corporation, was about to resume redrilling of said well by the use of mud as a circulating fluid, a letter was addressed to said appellee, Bolsa Chica Oil Corporation on July 31, 1940, calling its attention to the injunction of the Court against the use of mud, and enclosing a copy of said injunction; that thereafter (and on August 1, 1940) a conference was

had between appellees, Thomas W. Simmons, president of Bolsa Chica Oil Corporation, Warren S. Pallette and Wililam H. Cree, attorneys for said Bolsa Chica Oil Corporation, Allen A. Anderson, drilling superintendent of Bolsa Chica Oil Corporation, and Vernon L. King, petroleum engineer for the Trustee in Bankruptcy, R. D. Holdredge, representing the Trustee, and Joseph J. Rifkind, one of the attorneys for the Trustee. At said conference appellees aforesaid sought to secure an agreement to eliminate from said injunction the provision against the use of mud as a circulating fluid [Tr. p. 64]; that at said conference appellees' attention was called to the fact that the use of mud in the "Petroleum Well" theretofore had caused a column of mud 3700 feet high to rise in the "Huntington Shore Well" and that such fact was the best evidence that the use of mud as a circulating fluid would damage the "Huntington Shore Well" and that no modification of the injunction would be stipulated to; that said Thomas W. Simmons stated at said conference that a large amount of money had been spent by his company and some way would have to be found to resume drilling operations despite the injunction; that said William H. Cree, one of the attorneys for appellee, Bolsa Chica Oil Corporation, advised that said injunction be ignored [Tr. p. 65]; that counsel for appellant stated that the injunction was in full force and effect and that if mud was used, contempt proceedings would be instituted; that previous to this conference, a conference was had between said Thomas W. Simmons and Raphael Dechter, also of

counsel for appellant, wherein a modification of said injunction as to the provision against the use of mud was sought and was refused [Tr. p. 66]; that thereafter appellant received information that some arrangement had been effected between the Bolsa Chica Oil Corporation and its agents, officers and employees and H. H. McVicar, C. M. Rood and M. M. McCallen Corporation, the other appellees, whereby drilling operations were being resumed in the "Petroleum Well"; that a letter was then sent by appellant to McVicar-Rood, Inc. under date of August 21, 1940, advising them of the injunction and the restriction against the use of mud in the redrilling of said "Petroleum Well" [Tr. p. 67]; that the appellees entered into a conspiracy for the purpose of violating said injunction, and in order to give color to said transaction, entered into an agreement and an assignment, and in disregard of said injunction and the letters from appellant, commenced redrilling said well with the use of mud as a circulating fluid on or about August 22, 1940; that thereupon appellant filed a petition to certify said appellees for contempt, and said appellees, even after the service upon them of said petition, continued to use mud as a circulating fluid in the redrilling of said "Petroleum Well" [Tr. pp. 68-69]. From such facts, the Referee concluded that said appellees were in contempt of Court for violating said injunction and for aiding and abetting in the violation thereof, and in accordance with the procedure prescribed in section 41 of the Bankruptcy Act, duly certified the appellees to the District Court for contempt.

Questions Involved in This Appeal.

1. Where an order of injunction has been made by a Referee in Bankruptcy, no review or appeal having been taken therefrom within the time and in the manner provided by law, can said order be collaterally attacked as being in excess of the jurisdiction of the bankruptcy court?

2. Where the Referee, pursuant to section 41 of the Bankruptcy Act, certifies for contempt the appellees, for having violated a previous order of injunction which had become final, may the District Judge permit a collateral attack on the order of injunction, declare such order of injunction void, and dismiss the Referee's certificate of contempt based upon the violation of such order of injunction?

3. Where the appellee, Bolsa Chica Oil Corporation, has stipulated and consented to the making of an order of injunction, and has stated that no review would be taken from such order and that such order would be binding upon it, may said appellee, after such stipulated order has become final, question the jurisdiction of the bankruptcy court to make such order of injunction, when certified for contempt in violation of the terms of such consent or stipulated order?

4. Where the appellee, Bolsa Chica Oil Corporation, has stipulated to an order of injunction and has stated that no review will be taken therefrom and that it will be bound thereby, is not said appellee estopped from questioning the jurisdiction of the

bankruptcy court to make such order of injunction, at a subsequent hearing on an order to show cause why it should not be certified for contempt for violating the provisions of such consent order of injunction?

5. Does not the Bankruptcy Court have jurisdiction, both as a court of equity, and under the provisions of the Bankruptcy Act, to enjoin any interference or threatened interference with property in the custody of the bankruptcy court?

6. Does not the Bankrutcy Court have the power to adjudge appellee, Bolsa Chica Oil Corporation, in contempt for interfering with the property of the bankrupt estate, particularly so where such appellee had previous notice that the doing of an act in a certain manner would interfere with the property of the bankrupt estate, and where such appellee had agreed in writing not to do certain acts, the result of which would naturally cause damage to the property of the bankrupt estate, and where such appellee, contrary to its agreement, wilfully commits such acts, as a natural result of which the property of the bankrupt estate is damaged and the administration of the bankrupt estate interfered with.

Points Upon Which Appellant Relies.

The statement of the points upon which appellant will rely in this appeal is to be found at pages 267-269 of the transcript. These points are numbered and appear preceding the arguments addressed thereunder in this brief.

ARGUMENT.

I.

The District Court Erred in Permitting a Collateral Attack to Be Made Upon the Jurisdiction of the Referee to Render the Injunction (the Violation of Which Was the Basis of the Referee's Certificate of Contempt), Said Injunction Having Become Final, and No Appeal or Other Manner of Review Permitted by Law Having Been Taken Therefrom.

POINT 1. The District Court erred in rendering the order dismissing the Referee in Bankruptcy's Certificate of Contempt.

POINT 2. The District Court erred in sustaining objections to the jurisdiction of the District Court to hear the matter arising under the Referee's Certificate of Contempt.

POINT 3. The District Court erred in permitting a collateral attack to be made upon the jurisdiction of the Referee to render the injunction (the violation of which was the basis of the Referee's Certificate of Contempt), said injunction having become final, and no appeal or other manner of review permitted by law having been taken therefrom.

The order of injunction was made by the Referee on May 15, 1940. Said order was stipulated to in open court. In this connection, we quote from the findings of the Referee embodied in the certificate of contempt, at pages 57-58 of the transcript as follows:

> "That after the testimony introduced on behalf of the trustee in bankruptcy and upon the conclusion of the cross-examination by the attorneys for the Bolsa Chica Oil Corporation of the witnesses called on behalf of the trustee in bankruptcy, the attorneys for

the Bolsa Chica Oil Corporation stipulated in open court to the granting of an injunction against the Bolsa Chica Oil Corporation restraining them from coming closer than 200 feet from the Huntington Shore Well and prohibiting the Bolsa Chica Oil Corporation from using mud as a circulating fluid in the redrilling of this well. That pursuant to the stipulation entered into between the attorneys for the trustee in bankruptcy and the attorneys for the Bolsa Chica Oil Corporation an injunction was submitted to the above entitled court which had been previously approved as to form and content by the attorneys for the trustee in bankruptcy and the attorneys for the Bolsa Chica Oil Corporation, and said injunction was issued by the court on May 15, 1940."

After the Trustee had introduced evidence, both oral and written, in support of the order to show cause why an appropriate order should not be made by the Referee to protect the property of the bankrupt estate, the following took place, as shown by pages 150-160 of the transcript:

"Mr. Dechter: That is all for the petitioner, for the Trustee.

Mr. Borden: I think I made the statement in the first instance that our cross-examination was not to be construed as any waiver of our objection to the jurisdiction.

The Referee: Oh yes.

Mr. Borden: I don't think there is any question about that. We have no evidence to offer at the present time. I might have if there is any question in Your Honor's mind whether or not the Court, in a summary proceeding of this kind against a total stranger, and under these circumstances, has a right to take any action or to restrain us from proceeding.

I should like to have a continuance in order to put on some testimony without conceding the jurisdiction of the Court. I think the Court is entitled to have the benefit, no matter what order it makes with respect to directing the Trustee to commence plenary action or any other remedy available to him, of hearing testimony on both sides.

Mr. Dechter: We have no objection to giving Mr. Borden [188] a reasonable length of time.

The Referee: From what I know about this case here is the way I feel now: I don't think the bankruptcy court has any jurisdiction to tell a stranger where or how he should drill his well so long as that stranger does not interfere or trespass upon the rights of the bankrupt. Up to that point this Court has not anything to say. If there is a danger of trespassing or damaging the bankrupt's property, I think then the Court would have jurisdiction, that is, covering that particular phase of it. That is my offhand impression.

Mr. Borden: Well, I think there is no doubt if we were actually trespassing upon the property of the bankrupt, there is no doubt in my mind but what the Court would have ample opportunity to restrain us, but here we are drilling in separate lots where there is no interference at all. We are doing the same thing they have done since the matter has been in bankruptcy, Your Honor. They have drilled within one hundred feet of us, according to the testimony before the Court, but now they seek to enjoin us from proceeding to do the very same thing, to re-drill and place our well on production.

The Referee: I can say right now this court will not attempt to prevent you from re-drilling, but there is a certain course which this Court may prevent you from taking.

Mr. Pallette: I think we can stipulate to an order, if [189] you want to make one, restraining us from coming within a certain distance.

Mr. Dechter: That is agreeable.

The Referee: What would be a reasonable distance, the regulation of the Department?

Mr. Dechter: I am willing to make it within the radius of one hundred feet, or the diameter of two hundred feet. In other words, if counsel will agree—

The Referee: Why not follow the regulation—

Mr. Dechter: That is agreeable.

The Referee: —as Exhibit 1 provides?

Mr. Dechter: I might also call the Court's attention to the Huntington Townsite agreement which is binding on the Bolsa Chica Corporation, which contains this provision:

'Said member, with reference to said well, shall comply with all of the laws of the State of California and all rules and regulations of any agency of the State of California having jurisdiction thereof.' Now, other members of this association have agreed to comply with those rules and this agency has jurisdiction.

Mr. Borden: That is not before this Court. It is a matter of whether or not we were *interfering* with the bankrupt's property.

Mr. Rifkind: I understand it is agreeable that an injunction be granted embodying the regulations—

Mr. Pallette: No. [190]

Mr. Rifkind: What is that?

Mr. Pallette: No.

Mr. Rifkind: What do you suggest?

Mr. Pallette: I suggested we would be willing to stipulate that an injunction be granted restraining us from coming within a reasonable distance of the well.

Mr. Dechter: All right.

Mr. Pallette: I think we will have to consult with our engineers as to what they deem to be a reasonable distance.

Mr. Dechter: If you make it one hundred feet it will end the matter.

The Referee: Is it one hundred or two hundred?

Mr. Dechter: Within a radius of one hundred feet or a diameter of two hundred feet.

Mr. Borden: No one ever contended we would get any closer than that.

The Referee: Suppose, gentlemen, I continue this matter and then you can see if you can get together on an order?

Mr. Pallette: I wouldn't be surprised but what we could stipulate on one hundred feet, but I don't think I am justified in doing so without consulting our engineers.

Mr. Borden: I think that is a good idea. Let the record show, if Your Honor please, that by suggesting that we are willing to submit to the jurisdiction of the Court, that we do not do so until we actually do so.

The Referee: Yes, I understand that. Suppose I continue [191] this matter for a week or ten days.

Mr. Pallette: Could it be continued for a shorter time than that. We have a hearing set before the

State Lands Commission some time during the middle of next week *at which time we hope to get the consent of the State to proceed.*

The Referee: You are not going to proceed until you do that?

Mr. Pallette: We are closed down. We have been closed down for about a week, and we have no intention of proceeding now. We hope to work out an agreement with the Chairman of the State Lands Commission some time during the week. I suggest a continuance be granted until Tuesday or Wednesday.

The Referee: Of this next week?

Mr. Pallette: Yes.

Mr. Dechter: Of the coming week, or the week following?

Mr. Pallette: Next Tuesday or next Wednesday.

Mr. Borden: I don't think it would take any time at all.

Mr. Dechter: I suggest we make it Wednesday, Your Honor.

The Referee: Well, due to the condition of my calender I will continue it until May 1st, in the afternoon, 2:00 p. m.

Mr. Rifkind: Do I understand that until that time there will be no resumption of drilling?

Mr. Pallette: That is correct, we will consent to not re-drill before next Wednesday, that is, to make any holes.

The Referee: Very well.

(Whereupon an adjournment was taken to the hour of 2:00 p. m., May 1st, 1940.) [192]

Los Angeles, California. Wednesday, May 1, 1940. 2:00 o'clock p. m. Session.

* * * * * * * *

The Referee: Have you accomplished anything in the matter of Jack Dave Sterling?

Mr. Rifkind: Yes, Your Honor. We have reached a stipulation that an injunction may be issued by the Court against the Bolsa Chica Oil Corporation. We have already given the specific language to the reporter and I would like him at this time to read it to the Court.

The Referee: Is the stipulation generally agreed to between counsel?

Mr. Borden: Yes.

The Referee: You may state generally what it is.

Mr. Borden: We have stipulated as to the order. We do not concede jurisdiction of the Court. We are going to agree that we will not review the order of Court and will be bound by the order. However, I make that statement because we do not want to *generally* concede jurisdiction.

The Referee: You may review any order this Court makes I would welcome a review—but if I were going to be reviewed on a question of jurisdiction I would want to give serious consideration to the question.

Mr. Borden: I will say you will not be required to do so; but we do not want to submit to any proceedings in a [193] court where we are strangers.

Mr. Rifkind: I would like to have the reporter read aloud our stipulation.

The Referee: Very well.

Mr. Borden: I agree with you, but I wanted our position made perfectly clear.

(Whereupon the stipulation referred to was read by the reporter, as follows:)

'Bolsa Chica Oil Corporation, its superintendent, agents and employees, shall be restrained and enjoined from drilling, re-drilling or sidetracking its Petroleum Well, also known as Fee No. 1 Well at Huntington Beach, California, so that it comes closer than 200 feet from the Huntington Shore Well measured on a horizontal plane at any point below the depth of 3800 feet below sea level as the course of the Huntington Shore Well is shown on the plat or chart marked Trustee's Exhibit 5.

In determining whether such drilled, re-drilled or sidetracked portion of Petroleum Well, also known as Fee No. 1 Well approaches within 200 feet of the Huntington Shore Well, measured as above set forth, the course of the Huntington Shore Well in said plat shall be as delineated on said plat and shall be conclusive as to the parties; and the distance therefrom shall be conclusively determined by plotting the course of the drilled, re-drilled or sidetracked portion of said [194] Fee No. 1 Well on said plat, based upon single shot surveys taken during the course of the drilling, redrilling or sidetracking of the Petroleum Well, also known as Fee No. 1 Well, at approximately every 100 feet, which single shot surveys shall be made available to the Trustee in Bankruptcy or his representatives as the same are from time to time taken and made;

That the circulating fluid in drilling, re-drilling, or sidetracking of said Petroleum Well, also known as Fee No. 1 Well, shall be virgin crude oil maintained at a grade and gravity consistent with good oil practice in said field, and that no mud or other foreign substances of any kind shall be used in lieu

of such circulating fluid, provided that a substitute circulating fluid may be used as may be mutually agreed to in writing between the petroleum engineers for the respective parties thereto.'

* * * * * * * *

The Referee: Is that stipulation agreeable, gentlemen?

Mr. Borden: Yes.

Mr. Rifkind: We will prepare an order.

The Referee: Very well, prepare a formal order.

Mr. Rifkind: It will be approved as to form and contents by both sides.

Now, I want to introduce as Trustee's exhibit next in order this plat showing among other things the course of the [197] Huntington Shore Well and the course of the old Bolsa Chica Well.

Mr. Pallette: The present course.

Mr. Rifkind: The present course of the Bolsa Chica Well, known as Petroleum Well, and also known as Fee No. 1 Well.

The Referee: The plat will be marked Trustee's Exhibit No. 5.

(The document referred to is marked Trustee's Exhibit No. 5, in evidence.)"

It is the contention of the appellant that even had not said order of injunction been stipulated to, and even had the order been in excess of the jurisdiction of the Bankruptcy Court, jurisdiction is an issue, like any other issue in a case, which, after an order becomes final, is not subject to any reopening or further hearing thereon. A decision which is *res judicata* concludes all issues raised thereunder, and that could have been raised thereunder.

In this case one of the issues raised by appellees was the question of the jurisdiction of the Bankruptcy Court. Thus, once having raised such question, appellees are now finally bound by the decision of the Bankruptcy Court in disposing of such issue, and are forever concluded from making a collateral attack thereon.

This point has been definitely decided by the United States Supreme Court in the following decisions:

In the case of *Baldwin v. Iowa State Traveling Men's Ass'n.,* 283 U. S. 522, 51 S. Ct. 517, 75 L. Ed. 1244, involving an action brought against defendant in the United States District Court of Missouri, defendant having appeared specially for the purpose of objecting to the jurisdiction of the Court. The Court overruled the objection and the defendant took no further steps of any kind in the proceeding after the Court overruled the objection. Judgment, was rendered against defendant in said proceeding. Later on the judgment creditor in said suit brought an action at the residence of the defendant, which was in the United States District Court of Iowa. Defendant claimed that the Missouri District Court had no jurisdiction to render the judgment. The Iowa District Court sustained this defense and dismissed the action. The question of whether such a collateral attack could be made on the first judgment was taken to the United States Supreme Court, which Court, in a decision by Justice Roberts, makes the following statement (283 U. S. pp. 524, 525, 526):

> "The substantial matter for determination is whether the judgment amounts to *res judicata* on the question of the jurisdiction of the court which rendered it over the person of the respondent. *It is of*

*no moment that the appearance was a special one expressly saving any submission to such jurisdiction. That fact would be important upon appeal from the judgment, and would save the question of the propriety of the court's decision on the matter even though after the motion had been overruled, the respondent had proceeded, subject to a reserved objection and exception, to a trial on the merits. * * * The special appearance gives point to the fact that the respondent entered the Missouri court for the very purpose of litigating the question of jurisdiction over its person. It had the election not to appear at all. If, in the absence of appearance, the court had proceeded to judgment and the present suit had been brought thereon, respondent could have raised and tried out the issue in the present action, because it would never have had its day in court with respect to jurisdiction.* * * * It had also the right to appeal from the decision of the Missouri district court, as is shown by *Harkness v. Hyde,* 98 U. S. 476, 25 L. ed. 237, *supra,* and the other authorities cited. It elected to follow neither of those courses, but, after having been defeated upon full hearing in its contention as to jurisdiction, it took no further steps, and the judgment in question resulted.

"Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause." (Italics ours.)

Another of such Supreme Court decisions is *Chicot County Drainage Dist. v. Baxter State Bank,* 308 U. S. 371, 60 S. Ct. 317, 84 L. Ed. 329 (rehearing denied 309 U. S. 695, 60 S. Ct. 581, 84 L. Ed. 1035) which involved a bankruptcy proceeding under the municipal reorganization and adjustment provision for the adjustment of bonds of the drainage district. In this case it appeared that the particular bondholder had been a claimant in the reorganization proceedings. Notwithstanding such reorganization, and notwithstanding the fact that a claim had been filed, the bondholder filed suit on its original bonds, contending that the bankruptcy court in the reorganization proceeding was without jurisdiction, for the reason that the Municipal Reorganization Act was ruled unconstitutional by the United States Supreme Court. Chief Justice Hughes, in writing the opinion, states as follows at 308 U. S. at pp. 374, 375:

> "The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the alleged decree. *Norton v. Shelby County,* 118 U. S. 425, 442; *Chicago, I. & L. Ry. Co. v. Hackett,* 228 U. S. 559, 566. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to

particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. Those questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified. Without attempting to review the different classes of cases in which the consequences of a ruling against validity have been determined in relation to the particular circumstances of past transactions, we appropriately confine our consideration to the question of *res judicata* as it now comes before us."

Also quoting from the syllabus, as follows:

"The lower federal courts, including the District Court sitting as a court of bankruptcy, though their jurisdiction is limited to that prescribed by Acts of Congress, are nevertheless courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act. *Their determinations of such questions, while open to direct review, may not be assailed collaterally.*"

And at page 376 the court said:

"The argument is pressed that the District Court was sitting as a court of bankruptcy, with the limited jurisdiction conferred by statute, and that, as the statute was later declared to be invalid, the District Court was without jurisdiction to entertain the proceeding and hence its decree is open to collateral attack. We think the argument untenable. The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. *But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act. Their determinations of such questions, while open to direct review, may not be assailed collaterally.*"

Also, at page 378, where it was said:

"The remaining question is simply whether respondents having failed to raise the question in the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. *Such a view is contrary to the well-settled principle that res judicata may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, 'but also as respects any other available matter which might have been presented to that end.' Grubb v. Public Utilities Commission,* 281 U. S. 470, 74 L. Ed. 972, 50 S. Ct. 374, *supra; Cromwell v. Sac. County,* 94 U. S. 351, 24 L. Ed. 195, *supra.*"

(Italics are those of appellants wherever they appear.)

Another United States Supreme Court case directly in point is *Stoll v. Gottlieb,* 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104 (rehearing denied 305 U. S. 675, 59 S. Ct. 250, 83 L. Ed. 437), which involves a question arising out of a proceeding under section 77-B of the Bankruptcy Act. In said case the plaintiff had not filed a claim in the original 77-B proceeding wherein an order of reorganization had been made. However, after the order approving the plan of reorganization had been made, he filed a petition to vacate the same insofar as it eliminated the liability of Stoll as a guarantor under the bonds held by him. This petition to vacate was denied. Thereafter the bondholder filed a suit in the Municipal Court of Chicago for the full amount of his bonds, and contended that the decree of the bankruptcy court was void for lack of jurisdiction. The Municipal Court of Chicago held with the bondholder and awarded him judgment against Stoll for the full amount of the bonds, and disregarded the plan of reorganization approved by the United States District Court. An appeal was taken to the Appellate Court of Illinois, which reversed the Municipal Court; then an appeal was taken to the Supreme Court of Illinois which reversed the intermediate appellate court and upheld the Municipal Court judgment. Thereupon a review was taken to the United States Supreme Court which in turn reversed the Supreme Court of Illinois and held that when the bondholder filed his petition to vacate the decree of the District Court he subjected himself to the jurisdiction of said court for all purposes, both as to subject-matter and as to person.

We quote from the language of the opinion by Justice Reed at 305 U. S., pp. 171, 172, as follows:

> "The inquiry is to be directed at the conclusiveness of the order releasing the guarantor from his obligation *assuming the Bankruptcy Court did not have jurisdiction of the subject matter of the order, the release in reorganization of a guarantor from his guaranty of the debtor's obligations.*
>
> "A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators. There must be admitted, however, a power to interpret the language of the jurisdictional instrument and its application to an issue before the court. Where adversary parties appear, a court must have the power to determine whether or not it has jurisdiction of the person of a litigant, or whether its geographical jurisdiction covers the place of the occurrence under consideration. *Every court* in rendering a judgment tacitly, if not expressly, *determines its jurisdiction over the parties and the subject matter. An erroneous affirmative conclusion as to the jurisdiction does not in any proper sense enlarge the jurisdiction of the court until passed upon by the court of last resort, and even then the jurisdiction becomes enlarged only from the necessity of having a judicial determination of the jurisdiction over the subject matter.* When an erroneous judgment, whether from the court of first instance, or from the court of final resort, is pleaded in another court or another jurisdiction the question is whether the former judgment is *res judicata.* After a federal court has decided the question of the jurisdiction over the parties as a contested issue, *the court in which the plea of res judi-*

cata is made has not the power to inquire again into that jurisdictional fact. We see no reason why a court, in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court making the earlier determination on an actual contest over jurisdiction between the parties, *did have jurisdiction of the subject matter of the litigation.* In this case the order upon the petition to vacate the confirmation settled the contest over jurisdiction." (Italics ours.)

In this case of *Stoll v. Gottlieb, supra,* it was urged by the respondent there, as it is urged by the appellees in the present case, that the order was a complete nullity and subject to collateral attack. Such contention in the briefs of respondent there were answered by the following language in the decision, at page 172:

> "Courts to determine the rights of parties are an integral part of our system of government. *It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first."* (Italics ours.)

Incidentally, in said case of *Stoll v. Gottlieb, supra,* the Supreme Court refers to the case of *Fairbanks Steam Shovel Co. v. Wills,* 240 U. S. 642, 649, 60 L. Ed. 841, 36 S. Ct. 466, 36 Am. Bankr. Rep. 754, where the United States Supreme Court said: "The Bankruptcy Court is one of general jurisdiction."

We refer the Court to a recent case decided by the California District Court of Appeal, *Bank of America v. McLaughlin etc. Co.,* 40 Cal. App. (2d) 620, quoting from the syllabus as follows:

> "A bankruptcy court has the authority to pass upon its own jurisdiction, and also has the power to adjudicate title to property listed in the debtor's schedule."

Further quoting from the decision at pages 626-627, as follows:

> "The controversy between the parties on this point naturally divides itself into three headings: (1) the power of the bankruptcy court to pass upon its own jurisdiction; (2) its power to adjudicate title to property listed in the debtor's schedule; and (3) the effect of its decree determining more than one issue.
>
> (1) Preliminarily we start with the axiomatic observation that the decisions of the federal courts determining the jurisdiction of their own courts is controlling here as well as the decisions interpreting and declaring the purport and effect of their own judgments. Hence, when a judgment of a federal court is received in a state court it is to be accepted with the full faith and credit accorded that judgment in the jurisdiction where it was rendered and in the light of its interpretation in the federal decisions. This is the effect of the recent decision of the Supreme Court of the United States in *Stoll v. Gottlieb,* 305 U. C. 165 (59 Sup. Ct. 134, 83 L. Ed. 104), where it rejected the ruling of the Illinois state court refusing to accept certain decrees of a bankruptcy court as *res judicata* on the grounds that the bankruptcy court had no jurisdiction to enter the decrees.
>
> * * * * * * * * *

"With this rule in mind we turn to the federal decisions as determinative of the first two questions presented. In *Chicot County Drainage Dist. v. Baxter State Bank,* 308 U. S. 371, 376 (60 Sup. Ct. 317, 319, 84 L. Ed. 329) (1940), the United States Supreme Court said:

* * * * * * * * *

'The court has the authority to pass upon its own jurisdiction and its decree sustaining jurisdiction against attack, while open to direct review, is res judicata, in a collateral action. (*Stoll v. Gottlieb,* 305 U. S. 165, 171, 172, 59 Sup. Ct. 134, 137, 83 L. Ed. 104.)' "

The learned District Judge in the case at bar relied at great length upon the case of *Ex parte Sawyer,* 124 U. S. 200, 31 L. Ed. 402, 8 S. Ct. 482, which was one of the cases relied upon unsuccessfully by respondent in *Stoll v. Gottlieb, supra,* and which is to be distinguished from the case at bar in this respect: In *Ex parte Sawyer, supra,* a restraining order was issued *ex parte* without notice, against officers of the municipality. The officers of the municipality never appeared in the proceeding out of which the restraining order was issued. In other words, the officers of the municipality had never had their day in court, and the issue of jurisdiction of the subject matter and of the person had never been raised by them. The Supreme Court points out that where a person is served with process, if he feels that such process is issued out of a court that does not have jurisdiction, he may disregard the same, and thereafter, when the same is sought to be enforced against him, he may then raise the question of

lack of jurisdiction. (*Baldwin v. Iowa State Traveling Men's Ass'n, supra.*) But if he appears in said action and raises the question of jurisdiction and the objection to the jurisdiction is overruled, it is incumbent upon him to carry said issue to the highest tribunal, because once said matter becomes final, either by a decision of the highest tribunal, or because of the failure to raise such question, that issue can no longer be raised.

In said case of *Ex parte Sawyer, supra,* there were two dissenting opinions, one by Mr. Chief Justice Waite and one by Mr. Justice Harlan. We quote from the language of the dissent of the Chief Justice, as follows, at page 223:

> "If the court can take jurisdiction of such a case under any circumstances, it certainly must be permitted to inquire, when a bill of that character is filed, whether the case is one that entitles the party to the relief he asks, and, if necessary to prevent wrong, in the meantime, to issue in its discretion a temporary restraining order for that purpose. Such an order will not be void, even though it may be found on examination to have been improvidently issued. While in force it must be obeyed, and the court will not be without jurisdiction to punish for its contempt. Such, in my opinion, was this case; and I therefore dissent from the judgment which has been ordered."

In this connection we quote from the case of *Stoll v. Gottlieb, supra,* as follows, at 305 U. S., page 177:

> "We do not review these cases as we base our conclusion here on the fact that in an actual controversy the question of the jurisdiction over the subject matter was raised and determined adversely to the respond-

ent. That determination is *res adjudicata* of that issue in this action, whether or not power to deal with the particular subject matter was strictly or quasi-jurisdictional."

In the case of *Jennings v. U. S.*, 264 Fed. 399, which was a case where the United States District Court issued an injunction, it is said:

"Another reason why the objections of Mr. Jennings to the jurisdiction of the court below to issue the order of injunction in the equity suit are not tenable is that he is estopped from successfully objecting to that jurisdiction by the adjudication which the court necessarily made that it had jurisdiction when it issued the order of injunction on notice to him of the hearing on motion for it, and by his failure to appeal from it within the time fixed for his appeal by the acts of Congress."

We also refer to the recent case of *Sunshine Anthracite Coal Co. v. Adkins,* 310 U. S. 381, 84 L. Ed. 1263, 60 S. Ct. 907, quoting therefrom at 84 L. Ed., p. 1276, as follows:

"* * * The suggestion that the doctrine of *res judicata* does not apply unless the court rendering the judgment had jurisdiction of the cause is sufficiently answered by *Stoll v. Gottlieb,* 305 U. S. 165, 83 L. Ed. 104, 59 S. Ct. 134, 38 Am. Bank. Rep. (N. S.) 76, and *Treinies v. Sunshine Min. Co.,* 308 U. S. 66, *ante,* 85, 60 S. Ct. 44. As held in these cases, in general the principles of *res judicata* apply to questions of jurisdiction as well as to other matters—*whether it be jurisdiction of the subject matter or of the parties.*"

Another recent decision of the United States Supreme Court further supports appellant's contention. In the case of *Robert H. Jackson, Atty. Gen. of U. S. etc. v. Irving Trust Co. et al.,* 85 L. Ed. (Adv. Op.) 310, it was held:

> (Syl.) "An unappealed decree of a Federal District Court * * * is not subject to collateral attack upon a subsequent motion * * * to have it set aside upon the ground that the court was without jurisdiction * * * where the court on the trial, although it did not consider the jurisdictional question as such, denied a motion made to dismiss the suit * * * and all the issues necessary to a determination of the right to maintain the suit were before the court in that suit.
>
> "Whether a particular issue was actually litigated is immaterial on the question of the conclusiveness of a decree, where there was full opportunity to litigate it, and it was adjudicated by the decree."

We also wish to refer the Court to the recent case of *Sampsell v. Imperial Paper & Color Corp.,* 85 L. Ed. (Adv. Op.) 797, at p. 799, to the effect that the order of a Referee cannot be collaterally attacked where no appeal has been taken therefrom.

Also to the recent case of *Pittsburgh Plate Glass Co. v. National Labor Relations Board,* 85 L. Ed. (Adv. Op.) 771, at p. 779 to the effect that the entry of an order upon stipulation and consent does not in any wise detract from its force and effect.

Also to the case of *Swift & Co. v. United States,* 276 U. S. 311, 72 L. Ed. 587, 48 S. Ct. 311, from which we quote at 276 U. S. 326, as follows:

> "It is contended that the Supreme Court lacked jurisdiction because there was no case or controversy within the meaning of §2 of article 3 of the Constitution. * * * The defendants concede that there was a case at the time when the Government filed its petition and the defendants their answers; but they insist that the controversy had ceased before the decree was entered. The argument is that, as the Government made no proof of facts to overcome the denials of the answers, and stipulated both that there need be no findings of fact and that the decree should not constitute or be considered an adjudication of guilt, it thereby abandoned all charges that the defendants had violated the law; and hence the decree was a nullity." * * * "Moreover, the objection is one which is not open on a motion to vacate. * * * On a motion to vacate, the determination by the Supreme Court of the District that a case or controversy existed is not open to attack."

Also, at page 324, as follows:

> "But 'a decree, which appears by the record to have been rendered by consent, is always affirmed, without considering the merits of the cause.' Nashville, C. & St. L. R. Co. v. United States, 113 U. S. 261, 266, 28 L. Ed. 971, 973, 5 Sup. Ct. Rep. 460. * * * Where as here, the attack is not by appeal or by bill of review, but by a motion to vacate, filed more than four years after the entry of the decree, the scope of the enquiry may be even narrower."

Quoting, further, at page 372:

> "If the court erred in finding in these allegations a basis for fear of future wrong sufficient to warrant an injunction, its error was of a character ordinarily remediable on appeal. Such an error is waived by the consent to the decree. United States v. Babbitt, 104 U. S. 767, 26 L. Ed. 921; McGowan v. Parish, 237 U. S. 285, 295, 59 L. Ed. 955, 963, 35 Sup. Ct. Rep. 543. Clearly it does not go to the power of the court to adjudicate between the parties."

It was likewise error for the District Court to go behind the order of injunction, inasmuch as the only issue before it was the question of contempt, and whether or not the appellees had committed a contempt by violating the order of injunction.

> *Remington on Bankruptcy* (5th Ed.), Vol. 7, Sec. 3043.

Also:

> *Remington on Bankruptcy* (5th Ed.), Vol. 5, Sec. 2428.

II.

The Appellee, Bolsa Chica Oil Corporation, Was Estopped From Questioning the Order of Injunction by Reason of Its Consent to the Making Thereof.

POINT 6. The District Court erred in sustaining objections to the jurisdiction of the Referee to issue the injunction (the violation of which was the basis for the Certificate of Contempt), for the reason that respondents are estopped from asserting such objections by virtue of their having submitted themselves to the jurisdiction of the bankruptcy court by stipulating that the injunction might be entered against them, by cross-examining the witnesses and otherwise participating in the proceedings against them.

POINT 7. The District Court erred in sustaining objections to the jurisdiction of the Referee to issue the injunction (the violation of which was the basis for the Certificate of Contempt) for the reason that respondents are estopped from asserting such objections by virtue of their having failed to taken an appeal or review from the injunctive proceedings before the Referee.

POINT 8. The District Court erred in failing to hold that any purported reservation of jurisdictional objections by the respondents was waived and nullified by the effect of the general appearance made by respondents in stipulating that the injunction might be entered against them and by approving the order of injunction not only as to form but as to contents as well.

The appellee, Bolsa Chica Oil Corporation, had the right to submit to the Bankruptcy Court's jurisdiction, which it did in this case. The evidence in this case shows that the appellee, Bolsa Chica Oil Corporation, consented to and stipulated to such order of injunction. Such consent and stipulation are evidenced by the following references to the record: [Tr. p. 57 and pp. 150-160] and quoted under Point I of this brief.

The complete testimony before the Referee leading up to the order of injunction of May 15, 1940, is not contained in the record for the reason that appellee, Bolsa Chica Oil Corporation, having stipulated thereto, and such stipulation and consent being evidenced by the Referee's certificate, and such order being based upon such consent, appellant did not consider that such evidence was necessary to be included in the transcript on appeal, although the reporter's transcript of such evidence and proceedings is in the possession of the clerk of the above court.

However, the principal question on this appeal is whether the Referee had jurisdiction to make the order of injunction and to issue the certificate of contempt.

The record clearly indicates that the Referee would not have signed the order and would not have made the terms of the injunction as broad as they are were it not for the statements of the appellee, Bolsa Chica Oil Corporation, that it would be bound by the order and that it would not take a review of such order. The Referee stated that if it were not for such statement of agreement not to review, he would want to give the matter further consideration before making such order. [Tr. p. 156.]

It is a well established point of law that a person who consents to the making of an order cannot question the power and jurisdiction of the court thereafter. By his consent and stipulation he recognizes the authority of the Court to make the same.

Semple v. Wright, 32 Cal. 659;

Morrow v. Learned, 76 Cal. App. 538;

Jackson v. Brown, 82 Cal. 275;

Fitzgerald v. Terminal Dev. Co., 11 Cal. App. (2d) 126.

It is appellant's contention that the appellee, Bolsa Chica Oil Corporation, by joining in the preparation of said order of injunction [Tr. p. 154], and by stipulating to the same in open court, virtually asked that the bankruptcy court give it relief and exercise its power. In this connection we refer the Court to 3 *Cal. Jur.,* p. 12, as follows:

> "In determining whether an appearance is general or special, *the characterization given it by the party is of no consequence whatever.* * * * On the other hand, if he appears and asks for any relief which could only be given a party in a pending case, *or which itself would be a regular proceeding in the case, it is a general appearance no matter how carefully or expressly it may be stated that the appearance is special."* (Italics ours.)

Upon the hearing before the Referee the questions to be decided were whether the manner in which the appellee, Bolsa Chica Oil Corporation, was drilling its "Petroleum Well" would result in a trespass and damage to appellant's property, and whether to issue an order of in-

junction, enjoining such redrilling of said "Petroleum Well" in such a manner as would result in a trespass and injury to the property of the appellant. In connection with such issues, it was necessary to decide how close appellee, Bolsa Chica Oil Corporation, should drill its well to the well of appellant, the kind of circulating fluid to be used, *et cetera*. By its stipulation, appellee, Bolsa Chica Oil Corporation, asked the Court to make such determination in accordance with the stipulation.

In the proceeding before the Referee, the appellee, Bolsa Chica Oil Corporation, offered to enter into a stipulation that an injunction be issued in accordance with the agreement of appellant and appellee, Bolsa Chica Oil Corporation. In the written stipulation that followed, a recital appears to the effect that by virtue of entering into said stipulation the appellee, Bolsa Chica Oil Corporation, did not concede the general jurisdiction of the Bankruptcy Court. This expression would appear inconsistent with the submission to jurisdiction by said appellee. Quite obviously the purpose and effect of such recital was to limit the appearance of the appellee, Bolsa Chica Oil Corporation, to the particular matter of the injunction and not to submit to the general jurisdiction of the Court for other purposes as well. Furthermore, it is well settled that a general appearance by a party-litigant waives any objection that such party-litigant may have to the jurisdiction of the Court over such party-litigant. Having submitted itself to the jurisdiction of the Bankruptcy Court by participating in the proceedings, by the cross-examination of witnesses by offering to stipulate to the issuance of the order of injunction, by agreeing not to review the stipulated order of injunction, and by actually

stipulating to the issuance of such injunction, the appellee, Bolsa Chica Oil Corporation, thus forever concluded the question of the Court's jurisdiction over it, irrespective of any subsequent attempt to denominate such procedure as being purely a special appearance for the purpose of questioning the Court's jurisdiction. In other words, a party-litigant may question the jurisdiction of the Court, but while doing so, it may not ask the Court for affirmative relief and yet claim not to have submitted itself to the Court's jurisdiction.

In the case of *Burrows v. Burrows,* 10 Cal. App. (2d), 749, 750, the Court said:

> "It is the well-settled rule that if a party defendant raises any question other than that of jurisdiction or asks for any relief which can only be granted upon the hypothesis that the court has jurisdiction of his person, his appearance is general, though termed special, and he thereby submits to the jurisdiction of the court as completely as if he had been regularly served with summons. (Security Loan & Trust Co. v. Boston & South Riverside Fruit Co., 126 Cal. 418 (58 Pac. 941, 59 Pac. 296); Olcese v. Justice's Court, 156 Cal. 82 (103 Pac. 317).)"

We also refer the Court to the case of *Feldman Investment Co. v. Connecticut Life Insurance Co.,* 78 Fed. (2d) 838, from which we quote as follows:

> "An offer to confess judgment constitutes a general appearance and waives objections to jurisdiction of the person."

In 6 *Corpus Juris Secundum,* section 1(c), page 9, it is said:

> "* * * A defendant appearing specially to object to the jurisdiction of the court must, as a general rule, keep out of court for all other purposes and limit his appearance to that particular question. Consequently, if, after he has appeared specially to question the jurisdiction, defendant fails to limit his appearance to a consideration of that particular question, or takes any step consistent with the hypothesis that the court has jurisdiction of the cause and the person, the special appearance is thereby converted into a general appearance irrespective of whether or not it is by its terms limited to a special purpose, *and an attempted reservation of the special appearance and rights thereunder is wholly ineffectual.*" * * * (Italics ours.)

Citing:

Benedict v. Seiberling, 17 Fed. (2d) 841 (D. Ct. Ohio);

O'Brien v. Lashar, 273 Fed. 521 (C.C.A., Conn.);

Payne v. Pullan, 44 Cal. App. 728.

We also wish to refer the Court to Vol. 3, *Am. Jur.,* section 12, p. 790, as follows:

> "If an appearance is in effect a general one, the fact that the party making it characterizes it as a special appearance or that it is expressly limited by its terms as special, does not prevent it from being general, as all appearances are presumed to be general."

Further, quoting 3 *Am. Jur.,* section 42, p. 811:

> "And in an action is a federal court, where the defendant appears specially for the purpose of raising the question of jurisdiction over his person, is fully heard upon such question, and, upon the overruling of his motion to quash service, takes no further part in the case and seeks no review, a judgment subsequently entered against him on the merits is *res judicata* on the question of jurisdiction and is not subject to be collaterally attacked on that same ground when issued on in another state." (Citing *Baldwin v. Iowa State Traveling Men's Ass'n, supra.*)

We further refer the Court to the case of *State ex rel. Bingham v. District Court,* 80 Mont. 97, 257 Pac. 1014 where the court stated:

> "In short, the rule is that counsel cannot asservate and reprobate in the same breath; he cannot acknowledge that the cause is in court for certain purposes and at the same time assert that the court is without jurisdiction to proceed in the cause in any manner. In the situation in which counsel found himself in March, he was at a juncture of the main highway and a byway; he could not travel both, but was compelled to choose which way he would go; having chosen the highway leading to a final determination of the action, he was barred from entering also upon the byway or thereafter returning to it."

The evidence in this case shows that appellee, Bolsa Chica Oil Corporation, not only participated in the hearing

by cross-examining the witnesses of the trustee [Tr. pp. 57 and 150], but helped to prepare the order of injunction and stipulated to such order. Said order was approved not only as to form but also as to contents. [Tr. p. 32]. Appellant's contention is that appellee, Bolsa Chica Oil Corporation, could not in one breath say "You can make this order," and at the same time say "You have no right to make it."

Furthermore, it is appellant's contention that the question of whether or not consent was given is a question of fact (*Remington on Bankruptcy* (5th Ed.), Vol. 5, p. 336) and the Bankruptcy Court having found that consent was given and no appeal having been taken, said matter was forever concluded against the appellees.

It must be strongly emphasized that the consent of the appellee, Bolsa Chica Oil Corporation, was not necessary, since the Bankruptcy Court may, in any event, issue injunctions to prevent interference or damage to the property in its possession. But even assuming that the consent of appellee, Bolsa Chica Oil Corporation, was necessary, we feel that it consented by virtue of its participation in the injunction procedings and by virtue of its stipulation to said order of injunction. Whether the appellee, Bolsa Chica Oil Corporation consented or not, is a question of fact. The finding by the Referee that there had been such consent, where supported by evidence, should not be disturbed. *Remington on Bankruptcy* (5th Ed.), Volume 5, Section 2197, p. 336 and *In re Traylor,* 27 F. Supp. 778, 779 (D. C. Ky.)

III.

The Bankruptcy Court, Both Under the Bankruptcy Act Itself, and as a Court of Equity, Has the Inherent Power to Protect Property in Its Custody and to Enjoin Any Injury or Threatened Injury Thereto.

POINT 4. The District Court erred in sustaining objections to the jurisdiction of the Referee to issue the injunction (the violation of which was the basis for the Certificate of Contempt) for the reason that the bankruptcy court is a court of equity and as such has inherent power to enjoin threatened harm to, or interference with, the property in custody of the bankruptcy court.

POINT 5. The District Court erred in sustaining objections to the jurisdiction of the Referee to issue the injunction (the violation of which was the basis for the Certificate of Contempt), for the reason that the bankruptcy court is given power, under Section 2(15) of the Bankruptcy Act of 1938 to enjoin any threatened harm to, or interference with, the property in custody of the bankruptcy court.

The bankruptcy court under section 2(15) of the Bankruptcy Act has the power to make such orders and issue such process as may be necessary properly to administer any property within its custody, control or jurisdiction. The Bankruptcy Court is also a court of equity and has the inherent power by injunction to protect any property within its custody or control.

See *Collier on Bankruptcy* (14th Ed.), §2.61, Vol. 1, p. 253, as follows:

> "Clause (15)" (of section 2(a) of Bankruptcy Act) "is an omnibus provision, phrased in such general terms as to be the basis for a broad exercise of power

in the due administration of a bankruptcy proceeding. The most important and frequent example of this exercise is the use of the power *to enjoin or restrain the actions of others.* While such power is probably inherent in the bankruptcy court as a court of equity, clause (15) gives it express legislative sanction."

"The essential purpose of §2a(15) is to give the court power to protect its custody of the estate and the administration thereof."

See, also, Collier on Bankruptcy (14th Ed.), Vol. 1, §2.65 from which we quote at page 280, as follows:

"The injunctive power, when exercised, is subject to the same rules and limitations as in the case of other equitable writs of injunction, and *its use is available to prevent the infliction of threatened or imminent,* but not mere possible, *injury.*" (Italics ours.)

In the *Matter of Baldwin,* 291 U. S. 610, the Supreme Court said:

"To protect its jurisdiction from interference that court (the bankruptcy court) may issue an injunction. The power is not peculiar to bankruptcy or to the federal courts. It is an application of the general principle that where a court of competent jurisdiction has, through its officers, taken property into its possession the property is thereby withdrawn from the jurisdiction of other courts. Having possession, the court may not only issue all writs necessary to protect its possession *from physical interference,* but is entitled to determine all questions respecting the same." (Italics ours.)

In *Steelman v. All Continent Corp.,* 301 U. S. 172, 57 S. Ct. 705, 81 L. Ed. 1085, the United States Supreme Court, referring to section 2a(15) of the Bankruptcy Act, said:

> "Referring to these statutes, this court has said that 'the power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is * * * inherent in a court of bankruptcy, as it is in a duly established court of equity.' "

A bankruptcy court under Sec. 2a(15) and in the exercise of its equitable power, may issue injunctions and restraining orders to preserve the assets of the bankrupt's estate.

> *In re Consumers' Albany Brewing Co.* (D. C., N. Y.), 224 F. 235.

Labor unions may be enjoined from interfering with the operation of a brewery by a debtor in corporate reorganization, notwithstanding the Norris-La Guardia Anti-Injunction Act.

> *In re Cleveland and Sandusky Brewing Co.* (D. C. Ohio), 11 F. Supp. 198, 29 Am. B. R. (N. S.) 393, 127 A. L. R. 873.

In this connection, we again wish to refer the Court to the case of *Swift & Co. v. United States, supra,* quoting therefrom at 276 U. S., p. 326, as follows:

> "The argument ignores the fact that a suit for an injunction deals primarily, not with past violations, but *with threatened future ones;* and *that an injunction may issue to prevent future wrong, although no right has yet been violated.* Vicksburg Waterworks

Co. v. Vicksburg, 185 U. S. 65, 82, 46 L. Ed. 808, 815, 22 Sup. Ct. Rep. 585; Pierce v. Society of Sisters, 268 U. S. 510, 536, 69 L. Ed. 1070, 1078, 39 A. L. R. 468, 45 Sup. Ct. Rep. 571."

Also, at page 331, as follows:

"If the court, in addition to enjoining acts that were admittedly interstate, enjoined some that were wholly intrastate and in no way related to the conspiracy to obstruct interstate commerce, it erred; and had the defendants not waived such error by their consent, they might have had it corrected on appeal. But the error, if any, does not go to the jurisdiction of the court. *The power to enjoin includes the power to enjoin too much.*" (Italics ours.)

We refer the Court to the case of *Morehouse v. Giant Powder Company,* 206 Fed. 24, where it is said:

"A court of bankruptcy has jurisdiction to grant an injunction restraining any act which will interfere with the administration of the bankruptcy law against any person within its jurisdiction, whether a party to the bankruptcy proceedings or not."

In said cited case, Morehouse, the party found in contempt, was not a party to the bankruptcy procedings; was not named in the injunction in the bankruptcy court; yet the court, at pages 28 and 29 of this case, states as follows:

"It is contended that the plaintiffs in error were not and could not have been made parties to the bankruptcy proceedings, and that, therefore, the District Court had no jurisdiction over them, and no power to enjoin them. But section 2, cl. 15, gives the bank-

> ruptcy court power to issue injunctions against persons within the court's jurisdiction, whether parties to the bankruptcy proceedings or not, to prevent the transfer or disposition of any part of the bankrupt's property. * * * 'To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice.' "

The evidence in this case clearly shows, that on two occasions previous to the hearing on the contempt citation, the property of the bankrupt estate had been seriously interfered with and damaged, once due to the redrilling operations of the Termo Company, (a neighboring operator of both appellant and appellee, Bolsa Chica Oil Corporation), which conpletely destroyed the well of the bankrupt estate, necessitating its redrilling at a cost of $80,000.00 [Tr. p. 56]; and second due to the redrilling operations of the appellee, Bolsa Chica Oil Corporation, which necessitated remedial operations, to again place said well on production, damaging appellant to the extent of $12,540.00. [Tr. p. 62]. The evidence in this case shows that both the well of the appellant and the well of the appellee, Bolsa Chica Oil Corporation, as well as the well of the Termo Company, are bottomed under the ocean off the shore at Huntington Beach; that said wells are operated under easements from the State of California; that appellee, Bolsa Chica Oil Corporation, was bound by the same restrictions and conditions, in the operation of its well, as appellant [Tr. pp. 124-125]; that appellee, Bolsa Chica Oil Corporation, without secur-

ing the consent of the State of California [Tr. p. 154], commenced operations to redrill its "Petroleum Well"; that said appellee intended to re-drill said well under State easement 290-1 so that at the point where it struck the oil sands its well would be within a distance of less than one hundred feet from the "Huntington Shore" well of appellant being operated under State easement 309-2A [Tr. p. 125]; that the regulations of the State of California required it to be at least a distance of 200 feet from any other well [Tr. p. 95]; that appellee intended to (and actually did thereafter) use mud as a drilling fluid instead of crude oil as required by the regulations of the State of California [Tr. p. 95]; that the oil sands being of a porous and migratory nature would cause the mud used in redrilling said well of the appellee, Bolsa Chica Oil Corporation, to enter the "Huntington Shore Well" of the appellant, and thereby damage said well of appellant [Tr. p. 57, pp. 180-184]; that this threatened destruction was not based upon a mere possibility, as evidenced by the fact that it had already happened in the case of the redrilling of the Termo Well which took place before operations were commenced on the re-drilling of the well of the appellee, Bolsa Chica Oil Corporation, and that it also occurred when the operations were conducted on the well of said appellee.

Under such a showing it was competent for the Bankruptcy Court to issue its injunction requiring drilling operations to be conducted on the well of the appellee, Bolsa Chica Oil Corporation, in the manner required by law, so that they would not damage the property of the bankrupt estate. The appellee, Bolsa Chica Oil Corporation recognized that the request of the bankrupt estate was a reasonable one, and with the assistance of the engi-

neers of the appellee, Bolsa Chica Oil Corporation, it collaborated in the drafting and preparation of the order of injunction, to which it stipulated, and which it approved. [Tr. pp. 150-160.] The Bankruptcy Court did not interfere with the operation of the property of the appellee, Bolsa Chica Oil Corporation, but only enjoined such operation to the extent that it would damage appellant's well or interfere with the operation thereof by the Trustee. The right of the appellee, Bolsa Chica Oil Corporation, to redrill its well, did not include the right to destroy appellant's property rights and prevent future operation of appellant's well. Hence, in issuing the order of injunction against the appellee, Bolsa Chica Oil Corporation, the Referee was within the proper exercise of the equitable jurisdiction of the Bankruptcy Court.

In order for the Court to have a better understanding of the situation confronting the appellant and the appellee, Bolsa Chica Oil Corporation, in its operations, appellant wishes to call the Court's attention to the fact that there are a large number of wells, the surface locations of which are situated on the land side of the beach at Huntington Beach; that some of said wells are located as much as five blocks from the ocean beach; that said wells were originally drilled without the consent of the State of California, and without the consent of the Standard Oil Company of California, which owns the wells located on the beach at Huntington Beach; and that all of said wells, in order to be bottomed under the ocean, had to traverse the land of the Standard Oil Company of California, and

had to traverse the land of various other property owners in the Huntington Beach area; that said wells cross each other or cross within a short distance of each other in reaching the oil sands; that after said wells had been drilled, injunction suits were filed by the Standard Oil Company of California and the State of California; that as a result of such suits, a settlement was effected wherein and whereby easements were granted by the State of California upon a royalty basis to produce oil from the ocean bottom; that all of said easements are in identical form to that of appellant [Tr. p. 97]; that under said settlement, it was further provided that all of said operators should become members of an association called the "Huntington Beach Townsite Association" [Tr. p. 125] and that said association, as a representative of such operators whose wells were bottomed under the ocean and whose wells crossed the lands of the Standard Oil Company of California, would and did put up a bond to indemnify the Standard Oil Company of California for any damage to its wells by reason of any of said operators' wells interfering with the production of the wells of the Standard Oil Company of California in traversing the latter's lands. In other words, under said arrangement, said ocean bottomed oilfield was constituted a common pool in which each of said well owners was given an easement along and through which it could construct a cylindrical hole, for the purpose of extracting and producing oil [Tr. pp. 135-150]; that for the purpose of avoiding damage to each other's wells, regulations were adopted by the State re-

quiring the cylindrical hole of each operator to be a certain distance apart from the others, and that oil be used as a drilling fluid instead of mud so as to prevent mud from interfering with the operations of any of said other wells [Tr. p. 95]; that the appellee, Bolsa Chica Oil Corporation, was acquainted with all of the foregoing conditions, and because it knew that the consent of the State of California would not be given to the re-drilling of its wells in such manner, arbitrarily proceeded with such re-drilling without such consent. [Tr. p. 154.]

The learned District Judge indicated that an injunction will not issue for a threatened trespass but only for an actual trespass. We quote his language at page 8 of said reporter's transcript of the argument before him, lines 21 to 24, as follows:

> "But there is no case of that character in the federal courts holding that we can enjoin in advance of the doing of a tortious act."

The law is clearly settled that a litigant does not have to wait for a trespass that will cause irreparable injury to take place before taking any action, but where any threat of an act which will cause such damage is made, grounds for injunction exist. In this connection, we refer the Court to 24 *Cal. Jur.* 699 from which we quote as follows:

> "Originally, the right to restrain by injunction mere acts of trespass seems to have been confined to instances where the injury was to the freehold, in the

> nature of waste, such as the taking of wood or timber, extracting valuable minerals and the like. But the jurisdiction of equity is not now to be considered as confined alone to such cases; * * *. Thus a person may be protected in the enjoyment of an easement or right of way where his rights are *threatened.*" (Italics ours.)

In *Slater v. Pacific American Oil Co.,* 212 Cal. 649, the plaintiff obtained an injunction and damages against defendant for allowing certain injurious substances to be carried from defendant's wells onto plaintiff's property.

At page 655 of the foregoing case, the Court said:

> "However indefinite the evidence may be as a standard for the measurement of damages, our examination of the record satisfies us that *plaintiff sufficiently established that some portion of the oil, salt and other hydrocarbon substances causing the injury to his land had come from the operation of the defendant's wells.* This showing is sufficient to warrant the granting of *injunctive relief.*" (Italics ours.)

Further, the Court says at page 655:

> "It is settled that a trespass of a continuing nature, the constant recurrence of which renders the remedy at law inadequate, unless by a multiplicity of suits, affords sufficient ground for relief by way of injunction. (United Railroads v. Superior Court, 172 Cal. 80, 84 (155 Pac. 463, 464); Parker v. Larsen, 86 Cal. 236 (21 Am. St. Rep. 30, 24 Pac. 989).)"

We also refer the Court to the case of *Tristam v. Marques,* 117 Cal. App. 393, from which we quote at page 397 as follows:

> "The right to restrain by injunction may properly be exercised whenever from the particular nature of the property affected by the trespass the injury sustained cannot be remedied by an action at law. (*Roberts v. Hall,* 147 Cal. 434 (82 Pac. 66); High on Injunction, 4th Ed., 661; *Zierath v. McCann,* 20 Cal. App. 561 (129 Pac. 808).)"

In the case of *Parker v. Larsen,* 86 Cal. 236, the plaintiff was held to be entitled to injunctive relief where defendant allowed water to percolate or flow upon plaintiff's land.

In *Union Oil Co. v. Reconstruction Oil Co.,* 20 Cal. App. (2d) 170, 182, the plaintiff sought to enjoin defendants from slant-drilling an oil well under his land. The action was brought before the plaintiff had any cause of action for damages. The Court held the acts of defendant constituted a trespass which could be enjoined.

In *Union Oil Co. v. Domengeaux,* 30 Cal. App. (2d) 266, it was held that slant-drilling of an oil well under plaintiff's land was a trespass that could be enjoined. The Court held further that in cases of subsurface trespass the injury is irreparable in itself, citing with approval, *Richards v. Dower,* 64 Cal. 62 (28 Pac. 113).

IV.

The Bankruptcy Court Had the Right to Adjudge the Appellees in Contempt for Interfering With the Property of the Bankrupt Estate, Even Though No Injunction Had Ever Been Issued by the Bankruptcy Court.

POINT 9. The District Court erred in not considering the Certificate of the Referee and not hearing any evidence offered in addition thereto, because said evidence would have shown that respondents interfered with the property in the custody of the bankruptcy court and did so wilfully and intentionally, and with full knowledge of the harm being done the property in custody of the bankruptcy court; and that such conduct constitutes contempt of court even had there been no injunction.

The filing of the bankruptcy proceeding constitutes a *caveat* to the entire world. *Acme Harvester Co. v. Beekman Co.,* 222 U. S. 300, 56 L. Ed. 208, 32 S. Ct. 96; *Taylor v. Sternberg,* 293 U. S. 470, 79 L. Ed. 599, 55 S. Ct. 260; *Gross v. Irving Trust Co.,* 289 U. S. 342, 77 L. Ed. 1243, 53 S. Ct. 605; *Taubel-Scott-Kitzmiller Co. v. Fox,* 264 U. S. 426, 68 L. Ed. 770, 44 S. Ct. 396. By such *caveat* all persons are warned, admonished and enjoined from interfering with the property of the bankrupt estate. From the time of the filing of the petition in bankruptcy the property is in *custodia legis. Lazarus v. Prentice,* 234 U. S. 263, 58 L. Ed. 1305, 34 S. Ct. 851; *Mueller v. Nugent,* 184 U. S. 1, 46 L. Ed. 405, 22 S. Ct. 269; *Straton v. New,* 283 U. S. 318, 75 L. Ed. 1060, 51 S. Ct. 465. The property being in *custodia legis,* the

bankruptcy court has the inherent power to protect such property under its custody and jurisdiction, and any person knowing that such property is in the custody of the court, who willfully interferes therewith, is guilty of contempt.

In this connection, we quote from *Remington on Bankruptcy* (5th Ed.), Vol. 7, Sec. 3028, pp. 123, 124, as follows:

> "Interference with property in the custody of the bankruptcy court is of course a contempt. * * * And such interference is punishable as contempt even though no injunction be issued."
>
> *Clay v. Waters,* 178 F. 385 (C. C. A., Mo.);
>
> *In re Wilk,* 155 F. 943 (D. C., N. Y.).

We also wish to refer the Court to 23 *R. C. L.,* Sec. 70, p. 64, as follows:

> "It is the duty of a court appointing a receiver to protect him in the discharge of his duties and in the control and possession of the property in his custody as such against anyone interfering therewith, whether a party to the receivership proceeding or not, and whether he claims paramount to or under the right which the receiver was appointed to protect. The possession by the receiver is that of the court, and consequently if any person without leave intentionally interferes with such possession, he necessarily commits a contempt of court, and is liable to punishment therefor." *In re Tyler,* 149 U. S. 164, 37 L. Ed. 689.

At the time of the hearing on the petition why the appellees should not be certified for contempt, it was shown that the appellees had consented to an order requiring appellee, Bolsa Chica Oil Corporation, to re-drill its well in a certain manner; that such order was prepared with the assistance of the engineers of said Bolsa Chica Oil Corporation. Assuming, for the purpose of argument, that such order might have been beyond the authority of the Bankruptcy Court, it at least constituted a contract, and a rule of conduct between appellant and appellee, Bolsa Chica Oil Corporation. By such contract it was established what an ordinary prudent person should and should not do; it was established that if such course of conduct was not followed the bankrupt's property would be destroyed and the administration of the bankrupt estate necessarily interfered with. At such hearing on contempt proceedings before the Referee, it was shown that the appellee, Bolsa Chica Oil Corporation, its president, Thomas W. Simmons, its superintendent, Allan A. Anderson, and its attorney, William H. Cree, knew that the Termo Company had, by doing the very things which it was shown on the contempt hearing that said appellee, Bolsa Chica Oil Corporation, was doing, irreparably damaged the well of the bankrupt estate; that subsequent to the making of such stipulated order of injunction, and in violation thereof, the appellee, Bolsa Chica Oil Corporation, had caused a column of mud 3700 feet high to enter the well of the appellant and that notwithstanding such stipulated order and notwithstanding the notice and knowl-

edge that it had of the damage which would necessarily ensue to the property of the bankrupt estate, it proceeded, aided and abetted by the other appellees, to carry on operations in the same manner as prohibited by the order of injunction, and in the same manner that had caused damage to the bankrupt's well on two previous occasions. The evidence clearly shows that all of said appellees knew that said property was in the custody of the bankruptcy court; that all the appellees knew and were presumed to know that the requirements of the State of California were to use oil and not mud as a circulating fluid in the re-drilling of any well in said field. [Tr. p. 95]. We feel that a clearer case of interference with the property of the bankrupt estate would be difficult to prove.

We respectfully urge that under the law as hereinbefore set forth, the order of the District Court should be reversed.

Respectfully submitted,

RAPHAEL DECHTER AND
JOSEPH J. RIFKIND,
By RAPHAEL DECHTER,
Attorneys for Appellant.